

CONTRACT PROVISIONS OF THE
STATE WATER RESOURCES CONTROL BOARD (SWRCB)
DIVISION OF CLEAN WATER PROGRAMS
RELATIVE TO THE UTILIZATION OF
MINORITY BUSINESS ENTERPRISE (MBE) AND
WOMEN BUSINESS ENTERPRISE (WBE)
ON CLEAN WATER PROGRAM CONSTRUCTION CONTRACTS IN CALIFORNIA

This document and attachments shall be included by the owner as a contract provision for all construction contracts exceeding \$10,000.

Compliance with the requirements of this document and attachments satisfies the MBE/WBE requirements of the U. S. Environmental Protection Agency and the SWRCB. This document supersedes any conflicting requirements.

Failure to take the five (5) affirmative steps listed under Requirements, Section A, prior to bid opening and to submit "Minority Business Enterprise/Women Business Enterprise Information" (Attachment B) with the bid shall cause the bid to be rejected as a nonresponsive bid.

DEFINITIONS

BONA FIDE MINORITY BUSINESS ENTERPRISE (MBE) MEANS:

An MBE that has submitted a "Minority Business Enterprise/Women Business Enterprise Self Certification" (Attachment A) to, and been accepted as, a bona fide MBE by the owner. In addition, the following requirements apply:

1. An independent business concern which is at least 51% owned and controlled by minority group member(s) (see definition of Minority Group Member). Ownership and control can be measured by:
 - a. Responsibility for performance of contract work.
 - b. Management responsibility.
 - c. At least 51% share of profits and risk.
 - d. Other data (such as voting rights) that may be related to ownership and/or control.
2. In cases where a firm is owned and controlled by a minority woman or women, the percentage may be credited towards MBE participation or as WBE participation, or allocated, but may not be credited fully to both.

BONA FIDE WOMEN BUSINESS ENTERPRISE (WBE) MEANS:

A WBE that has submitted Attachment A to, and been accepted as, a bona fide WBE by the owner. In addition, the following requirements apply:

1. An independent business which is at least 51% owned by a woman or women who also control and operate it.
 - a. Ownership. Determination of whether a business is at least 51% owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51% owned by a married woman in a community property state will not be disqualified because her husband has a 50% interest in her share.

Similarly, a business which is 51% owned by a married man and 49% by an unmarried woman will not become a qualified WBE by virtue of his wife's 50% interest in his share of the business.

- b. Control and operation. "Control" means exercising the power to make policy decisions and "operate" means being actively involved in the day-to-day management of the business.

JOINT VENTURE (JV)

A business enterprise formed by a combination of firms under a JV agreement. To qualify as a bona fide MBE/WBE, the minority-owned/woman or women owned and controlled firms in the JV must:

1. Satisfy all requirements for bona fide MBE/WBE participation in their own rights.

In cases where a minority woman or women-owned firm participates in a JV, the percentage may be credited towards MBE participation or as WBE participation, or allocated, but may not be credited fully to both.

2. Share a clearly defined percentage of the ownership, management responsibilities, risks, and profits of the JV. Only this percentage will be credited towards the MBE/WBE goal.

MINORITY GROUP MEMBERS

A minority group member is an individual who is a citizen of the United States and one of the following:

1. Native Americans consist of American Indian, Eskimo, Aleut, and native Hawaiian.
2. Black Americans consist of U.S. citizens, other than Hispanic, having origins in any of the black racial groups of Africa.
3. Asian Pacific Americans consist of U.S. citizens having origins in any of the original peoples of the Far East, Southeast Asia, and the Indian subcontinent. This area includes, for example, China, Japan, Korea, the Philippines, Vietnam, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan. The Indian subcontinent takes in the countries of India, Pakistan, Bangladesh, Sri Lanka, Sikkim, and Bhutan.
4. Hispanic Americans consist of U.S. citizens with origins from Puerto Rico, Mexico, Cuba, or South or Central America. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in this category. Persons from Brazil, Guyana, Surinam or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category. In addition, this category does not include persons from Portugal, who should be classified according to race.

BROKERAGE MEANS

Buying and selling for others on commission or other fee basis without maintaining a warehouse or other similar inventory storage facilities (supplier and wholesale arrangements may also fall into this business enterprise category).

CONSTRUCTION MEANS

Erection, building, alteration, remodeling, improvement or extension of buildings, structures, or other property.

REQUIREMENTS

A. Positive Effort Documentation

The bidder must take affirmative steps prior to bid opening to assure that MBEs and WBEs are used whenever possible as sources of supplies, construction and services. Failure to take such steps prior to bid opening and to submit Attachment B with the bid shall cause the bid to be rejected as nonresponsive. Affirmative steps shall be as follows:

1. Including qualified MBEs and WBEs on solicitation lists.

The bidder must document that it requested assistance from the Small Business Administration and the Office of Minority Business Enterprise MBE/WBE assistance centers and that this request for assistance was received by the MBE/WBE assistance centers at least five (5) working days prior to the need for

referrals (see affirmative step no. 5).

2. Assure that MBEs and WBEs are solicited whenever they are potential sources.

The bidder must document that it has provided invitations to MBE/WBE bidders at least seven (7) working days prior to the need of a bid response.

The bidder must document that invitations were sent to at least three (3) (or all if less than three) MBE/WBE contractors/suppliers for each item of work referred by the MBE/WBE assistance center(s). The invitations must adequately specify the item(s) for which sub-bids were requested. The documentation of the bidder's effort to show positive efforts must indicate a real desire for a positive response; i.e., certified letter with return receipt requested or telephone call documentation. A regular letter or an unanswered telephone call is not adequate positive effort.

The bidder must submit to the owner documentation consisting of a list of all subbidders for each item of work that MBEs or WBEs were solicited including dollar amounts for both MBE/WBE and non-MBE/WBE sub-bidders.

3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBEs and WBEs.

A bidder must document that it gave consideration to dividing the contract into small proprietary portions (paving, electrical, landscaping, etc.). If this was not done, documentation must be submitted explaining why it could not be done.

4. Establish delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs and WBEs.

The bidder must document that it gave consideration to establishing a project schedule which would allow MBEs and WBEs to bid the work as subcontractors or suppliers. If this is not done, document reasons why the project schedule, or portions thereof, cannot be modified so as to accommodate interested MBEs and WBEs.

5. Use of the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U. S. Department of Commerce, as appropriate.

The bidder must present documentation that contact was made with both of the offices listed below. Their services are provided at no cost to the bidder. Do not write. The internet web site contains local SBA and MBDA centers. The local center may provide the bidder with a listing of MBE/WBE firms. If a list was not provided, bidder must explain why it was not and describe what MBE/WBE solicitation list was used.

Small Business Administration:
<<http://www.sba.gov>>

Government Contracting Office
455 Market Street, Suite 600
San Francisco, CA 94105
Telephone: (415) 744-8429

Office of Minority Business
Enterprise: Regional Office
U.S. Dept. of Commerce
<<http://www.mbda.gov>>

Minority Business Development
Agency (MBDA)
San Francisco, CA 94105
Telephone: (415) 744-3001

In addition, the bidder is encouraged to procure supplies and services from labor surplus area firms.

B. Other Requirements

1. The apparent successful low bidder must submit documentation showing that, prior to bid opening, all required positive efforts were made. This documentation must be received by the owner within ten (10) working days following bid opening (except Attachment B which is to be submitted with the bid). Failure to submit Attachment B with the bid will cause the bid to be rejected as nonresponsive.

2. If the apparent successful low bidder has rejected or considered as nonresponsive and/or nonresponsive any low MBE or WBE sub-bidder, a complete explanation must be provided to the owner.
3. Each MBE/WBE firm to be utilized must complete the Attachment A, which is to be with the documentation submitted to the owner by the apparent successful low bidder.
4. If additional MBE/WBE subcontracts become necessary after the award of the prime contract, Attachment B must be provided to the owner by the Prime Contractor within ten (10) working days following the award of each new subcontract.
5. Any deviation from the information contained in Attachment B shall not result in a reduction of MBE/WBE participation without prior approval of the owner.
6. When brokerage type arrangements are utilized, only the amount of commission or fee will be eligible for MBE/WBE consideration.
7. Failure of the apparent low bidder to perform the five affirmative steps prior to bid opening and/or to submit Attachment B with its bid will lead to its bid being declared nonresponsive by the owner. The owner may then award the contract to the next low responsive, responsible bidder meeting the requirements of these contract provisions. The owner also may rebid the contract.

C. State's "Fair Share" Objectives

The SWRCB has established the following fair share objectives for this construction contract:

14.9 % of the total bid dollar amount of this contract for MBE.

9.6 % of the total bid dollar amount of this contract for WBE.

(The owner may contact the SWRCB, Division of Clean Water Programs, Design Review Unit, at (916) 227-4586 for questions on the state's fair share objectives to be include in the specifications.)

D. Local/Regional Objectives

The owner may have established local/regional objectives and those requirements may be attached if appropriate.

ATTACHMENT A

**MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE
(MBE/WBE)¹**

SELF CERTIFICATION

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS

Firm Name: _____ Phone: _____

Address: _____

Principal Service or Product: _____

| | |
|-------|-------|
| - MBE | - WBE |
|-------|-------|

| | |
|--------------------|--------------------------------|
| - Prime Contractor | - Supplier of Material/Service |
| - Subcontractor | - Broker |

| | |
|------------------|-----------------|
| - Sole Ownership | - Corporation |
| - Partnership | - Joint Venture |

| Names of Owners | Percent Ownership | MBE-Ethnic Identity ¹ | WBE |
|-----------------|----------------------|-------------------------------------|-------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

Additional proofs may be required upon written challenge of this certification by any person or agency.
Falsification of this certification by a firm selected to perform Federally funded work may result in a determination
that the firm is nonresponsible and ineligible for future contracts.

Certified by: _____ Title: _____
(Signature)

Name: _____ Date: _____

¹ Refer to definitions on the next page.

-DEFINITIONS-

MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE)

An MBE or WBE is a business which is at least 51 percent owned and controlled by minority group members or by woman or women. Owners must exercise actual day-to-day management.

MINORITY GROUP MEMBERS

(a) American Indians

Persons having origins in any of the original peoples of North America. To qualify in this group, a person must be a citizen of the United States and meet one or more of the following:

- (1) Be at least one-fourth Indian descent (as evidenced by registration with the Bureau of Indian Affairs).
- (2) Characteristic Indian appearance and features.
- (3) Characteristic Indian name.
- (4) Recognition in the community as an Indian.
- (5) Membership in a tribe, band or group of American Indians (recognized by the Federal Government), as evidenced by a tribal enrollment number or similar indication.

(b) Black Americans

U.S. citizens, other than Hispanic, having origins in any of the black racial groups of Africa.

(c) Asian Americans

U.S. citizens having origins in any of the original peoples of the Far East, Southern Asia, the Indian subcontinent or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa. The Indian subcontinent takes in the countries of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.

(d) Hispanic Americans

U.S. citizens of Mexican, Puerto Rican, Cuban, or other Spanish culture or origin, regardless of race. Only those persons from Central and South American countries who are of Spanish origin, descent, or culture should be included in this category. Persons from Brazil, Guyana, Surinam or Trinidad, for example, would be classified according to their race and would not necessarily be included in the Hispanic category. In addition, the category does not include persons from Portugal, who should be classified according to race.

(e) American Eskimos and American Aleuts

MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE INFORMATION

FORM 4700-B (rev 2/98)

